

G. Public Facilities Plans

This section addresses whether the City of Bend’s ordinance NS-2111, adopting new public facilities plans for the city and a new Chapter 8, complies with Goal 11, Goal 14, applicable administrative rules, and OAR 660-024-0060, or whether the ordinance takes exceptions to those goals.

a. Legal Standard

Goal 11 and ORS 197.712(2)(e) require cities with a population greater than 2,500 to prepare and adopt public facilities plans for water, sewer and transportation services within the city’s UGB. Public Facilities Plans (PFPs) are required primarily to assure that local governments plan for timely, orderly and efficient arrangement of public facilities and services, and to serve as a framework for future urban development. Timely, orderly and efficient arrangement “refers to a system or plan that coordinates the type, locations and delivery of public facilities and services in a manner that best supports existing and proposed land uses.” Goal 11 and OAR 660-011-0000.

The required contents of a public facility plan are provided in OAR 660-011-0010(1), and are not intended to cause duplication or to supplant technical documents supporting facility plans and programs. OAR 660-011-0010(3). At a minimum, public facility plans shall include plans for water, sewer and transportation facilities and the responsibility(ies) for preparation, adoption and amendment of a public facility plan shall be specified within an urban growth management agreement. OAR 660-011-0015(1).

When evaluating a proposed UGB amendment, OAR 660-024-0060(8) requires that:

The Goal 14 boundary location determination requires evaluation and comparison of the relative costs, advantages and disadvantages of alternative UGB expansion areas with respect to the provision of public facilities and services needed to urbanize alternative boundary locations. This evaluation and comparison must be conducted in coordination with service providers, including the Oregon Department of Transportation with regard to impacts on the state transportation system. “Coordination” includes timely notice to service providers and the consideration of evaluation methodologies recommended by service providers. The evaluation and comparison must include:

- (a) The impacts to existing water, sanitary sewer, storm water and transportation facilities that serve nearby areas already inside the UGB;
- (b) The capacity of existing public facilities and services to serve areas already inside the UGB as well as areas proposed for addition to the UGB

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b. Summary of Local Actions

The city prepared certain water and sewer system master plans in 2007, which evaluated the capacity of existing public facilities to serve areas already within the UGB, as well as areas being studied at that time for possible inclusion in a UGB expansion area. Those master plans also identified significant system improvements needed both to serve lands and uses within the existing UGB (a significant number of homes in the prior UGB utilize septic systems) and to serve lands being considered for inclusion in a UGB expansion area. The master plans evaluate future service needs for a UGB expansion area containing only lands zoned UAR. They did not evaluate other exception lands, including a large area of rural residential development to the south of the city, or most of the lands zoned and planned for farm use to the east that were included in the UGB expansion area. See, e.g. R. at 467 (map of study area); R. at 500-504 (SE interceptor). The sewer collection master plan also did not evaluate the cost of some improvements identified as needed (North interceptor crossing of Deschutes River, R. at 497 “For this river crossing to be cost-effective, a bridge must be constructed over the river. * * * Costs for the bridge structure were not included in the cost for this interceptor.”]

In the first half of 2008, the city had certain addenda to the master plans prepared. [R. at 211]. Those include several analyses specific to particular areas (Newlands property; Hamby Road area). On October 8, 2008, the city provided the department an amended 45-day notice of its proposed UGB amendment that included a summary statement that it was also proposing to amend its public facilities plan element of the General Plan. However, no draft of the PFP Chapter (chapter 8) of the city's General Plan was provided until October 20, 2008 (seven days before the first evidentiary hearing).

Bend Ordinance NS-2111 adopts certain Water Public Facilities Plans and Sewer Public Facilities Plans as amendments to the Public Facilities Element of the Bend General Plan. [R. at 35]. The ordinance also appears to adopt the city’s sewer and water public facilities plans in support of and associated with its UGB expansion proposal. [R. at 35-1049] Exhibit A (Findings in Support of UGB Expansion) [R. at 37-210], Exhibit B (Findings in Support of the Amendments to the Public Facilities Plan) [R. at 211-224] and Exhibit C (Facilities Plans and all supporting components, addenda and supplements) [R. at 225-1049] are attached to Ordinance NS-2111.

Ordinance NS-2111 states:

* * * the Public Facilities serve the goals, objectives and policies of the General Plan by addressing the provision of public facilities and services within the urban growth boundary (UGB), services to areas outside the UGB, locating and managing public facilities and financing public facilities. [Record at Page 35] The city’s Goal 11 findings state “the proposed amendment to Chapter 8 of the Bend General Plan incorporates the city’s water system master plan and collection system master plan as Goal 11 public facility plans,” and “[i]n addition, the city has based the proposed expansion of the UGB in part on the development of three

(3) new sewer interceptors that are located beyond the city's current UGB. [R. at 205]

Exhibit C [R. at 225] includes documents that comprise the adopted Public Facilities Plan. The following is a general description of the facilities plan and incorporated documents provided in the findings:

The water system master plan covers those areas already inside the Bend UGB, and areas outside the current Bend UGB that are not already served by the Avion Water Company or another private water utility. The sewer master plans include a Collection System Master Plan (CSMP) that covers those areas inside the existing Bend UGB, and areas identified under the (prior, 2007) Bend Area General Plan as urban reserves. The sewer master plans also include a master plan for the reclamation facility, which is located north and east of Bend and treats effluent collected through the city system. [R. at 211]

The proposal includes a new chapter 8 of the Bend Area General Plan dated October 20, 2008. [R. at 1478-1498] No facility collection, distribution or service area maps are provided in chapter 8 of the plan. Map information is contained only in incorporated documents. The findings also incorporate by reference the adoption of water and sewer collection master plans and supporting documentation as the public facility plans for water and sewer service under Goal 11. [R. at 211]

The incorporated water and sewer collection master plans and supporting documents are described as follows. The adopted water public facility plan (WPF) includes:

- Water System Master Plan (WSMP) Update-Final Report (2007) [R. at 225-340]
- Airport Water System Master Plan (2007) [R. at 341-384]

The adopted sewer public facilities plan (SPFP) includes:

- Collection System Master Plan (CSMP) Final Report (2007) [R. at 385-516]
- CSMP Addendum No. 1 – Final Executive Summary and Alternative Technical Analysis: North East Bend (2007) [R. at 517-550]
- CSMP Addendum No. 2 – Collection System CIP Analysis and Report (2008) [R. at 551-692]
- CSMP Addendum No. 3 – Technical Memorandum 1.5 – Hamby Road Sewer Analysis (2008) [R. at 693-703]
- Water Reclamation Facilities Plan (2008) and Technical memos No. 1-10 [R. at 705-1048]

In a footnote, the city's findings state, "The record on the Bend UGB expansion also includes a 2007 draft of the CSMP, including nine study area plans that were submitted to DLCD on June 11, 2007." [R. at 211, see footnote 1].

A number of technical memos related to sewer planning appear in the city's supplemental submittal provided to the department on May 6, 2009. However, Ordinance NS-2111 and its associated findings do not appear to include these technical memos, and they are not listed as part of the incorporated public facilities plans adopted as part of the UGB adoption package which is described above from page 211 of the record.²⁹

The adopted public facilities plan includes sewer, stormwater and water services only. Transportation plans are not included in the public facilities plan amendment. The city's submittal and this report, however, do address transportation separately.

c. Objections and Analysis

The city did not prepare revised public facilities plans for water or sewer to address the additional lands added to its UGB expansion study area in 2008. Although there are parts of the city's submission that address parts of the additional expansion area, the primary two master plans limit their analysis to lands that were planned UAR in 2007. [R. at 450-453] Exception lands and agricultural lands to the east are not analyzed in the sewer system collection master plan. Nor are exception lands to the south of the city. The water system master plan only examined Tetherow and Juniper Ridge outside of the prior UGB. [R. at 249]

Nine objecting parties raised 13 specific concerns related to the city's public facilities plans. Four of the 13 parties filed public facilities plan objections during the city's first UGB submittal to the department on April 16, 2009, and in response to the city's June 12, 2009 supplemental submittal of public facilities plans as part of the UGB expansion proposal.

A list of objectors and a summary of objections filed in response to the city's public facilities plans follows. Parties filing objections on both submittals are noted with an asterisk.

- Swalley Irrigation District *
- Central Oregon LandWatch *
- Rose and Associates, LLC *
- Tumalo Creek Development, LLC *
- Toby Bayard
- Hunnel United Neighbors
- Newland Communities
- Anderson Ranch
- J. L. Ward Company

Swalley Irrigation District – The May 6, 2009 objection states that no notice was provided to DLCD or others for the city's public facilities plans, nor was notice provided advising of hearings on the plans. The objection further states that there was never a time when the city provided opportunity for meaningful input on the location of public

²⁹ Supplemental Items 99, 99A through 99M, Supplemental R. at 985 – 1210.

facilities. [p. 1]. The city's October 8, 2008 and October 20, 2008 revised notice to DLCD indicated that the city planned to adopt a variety of public facility plans on November 24, 2008, yet those plans were not attached to the revised DLCD notice, making the notice void. [p. 22]

The objection also states that draft public facilities plans were improperly used to influence the location of the UGB without adequate public input, thereby violating Goal 1. [pp. 25-26]

The objection points out that Goal 11 requires the city to (1) evaluate the carrying capacity of "air, land and water resources of the planning area" and not exceed such carrying capacity, (2) provide an orderly and efficient arrangement of public facilities and services, and (3) provide rough cost estimates for planned facilities. According to the objection, the city fails these requirements, particularly in the service areas of the Swalley Irrigation District. [p. 55]

The objection argues that, for reasons generally discussed above, chapter 8 of the Bend Area General Plan does not comply with OAR 660, divisions 11 or 24. [p. 80]

The objection points out that the city's Consolidated Sewer Master Plan (CSMP, 2007) acknowledges significant funding gaps. At the same time, the CSMP fails to compare the cost of sewer upgrades and enhancements to areas of failing onsite system or areas with infill and redevelopment capacity versus the CSMP's program. [pp. 88-89] The objection discusses several areas where the CSMP is allegedly deficient. [pp. 89-95]

The objection asks that the department remand and instruct the city to select public facility options that are reasonably affordable and can demonstrate reasonable costs for needed housing, and that the city be required to examine "undisputed" exception areas in the south and southwest quadrants of the city.³⁰ [p. 103]

Swalley Irrigation District also submitted objections in a July 6, 2009 letter (herein noted as SID2) on the city's public facility plan submittal. The objection's arguments regarding whether the department and the LCDC have jurisdiction to decide the adequacy of Bend's public facilities plan are examined in section III.D of this report. [SID2, pp. 8-12]

The objection argues that the public facility plan submittal failed to clearly identify what adoption decisions were submitted, leaving objectors to guess what the city actually submitted. [SID2, pp. 12-13]

The objection argues that since the UGB proposal does not demonstrate compliance with Goal 14, ORS 197.298 and OAR 660-0024-0060, the city must start over with its public facilities planning after it develops a new UGB proposal that follows and meets those requirements. [SID2, p. 43] The objection provides a number of technical challenges to

³⁰ Swalley Irrigation District has objected that lands zoned Urban Area Reserve (UAR) were not acknowledged exception lands.

the city's sewer master plan, which are similar to the objector's earlier May 2009 submittal. [SID2, pp. 45-55]

Central Oregon LandWatch – The May 7, 2009 objections argue that the sewer and water facility plans impermissibly provide infrastructure on lands outside the current UGB. [Page 16 of 18] The objector's June 30, 2009 objections argue that the city predetermined "so many aspects" of its UGB decision on the location of infrastructure, that it has not properly prepared public facility plans for lands inside the current UGB. The objection argues that the city has not recognized its overarching priority "to provide sewer to the thousands of acres and people currently lacking this service within the City." The objection points out that, while the city's Central Area needs infrastructure improvements and capacity to handle substantial infill development, it assumes only 500 new residential units due to Central Area sewer deficiencies. [p. 2] The objection incorporates by reference the June 28, 2009 objections of Toby Bayard.

Rose and Associates, LLC – The objector filed during both submittal phases. In its May 5, 2009 objection, it is argued, "The city erred by adopting the sewer and water master plans as part of the UGB rather than through an independent process." In addition, the city failed to comply with Goal 1 when it adopted the plans without separate public hearings. [p. 3] (See section III.K concerning Goal 1 objections.) The objection also points to technical errors regarding gravity sewer serviceability for specific property excluded from the UGB proposal. [p. 5]

The objector's June 29, 2009 submittal argues that the city sewer plan is inconsistent with the UGB amendment and does not provide for timely, orderly and efficient service, as required by Goal 11. The objection points out specific lands included in the UGB proposal but not in the sewer facilities plan, and other properties included in the sewer facilities plan but not in the UGB proposal. [p. 2]

Tumalo Creek Development, LLC – The objector's July 2, 2009 submittal states that the public facilities plan violates Goal 11 and OAR 660, division 11, because it does not consider more cost effective sewer alternatives. The objection cites its submittal of alternative lower cost technical solutions (e.g., membrane technology associated with satellite treatment facilities) for serving portions of the west side and Central Area, which it determined would provide much needed additional capacity in the city's urban core. According to the objection, however, the city did not consider objector's alternative proposal and the city's findings do not address the proposed alternatives. [p. 2] This objection is also included in the objector's May 7, 2009 submittal.

The objection argues that the sewer facility plan does not provide service in a "timely, orderly, and efficient" manner. The objection specifically points to the ability of the city to serve areas needing a Deschutes River crossing via the proposed North Interceptor as an area that will likely have to wait years and probably decades for sewer service, due to high costs and environmental concerns. The city has not adequately addressed these cost and environmental concerns, according to the objection. [pp. 2-3]

Toby Bayard – The objector’s June 28, 2009 objection argues that the city adopted its public facilities plans without the benefit of a public hearing, “having failed to advertise, properly notice, or inform the public that it was accepting testimony on the PFP.” (See section III.K of this report, dealing with Goal 1.)

While the objector’s June 28, 2009 objections include concerns over how the city adopted its public facility plans and how it used the same plans in determining its Goal 14 boundary location analysis, these issues are addressed elsewhere in this report. (See report discussions on Goal 1 and ORS 197.298.). The objection lays out a number of Goal 11 concerns as follows:

- There is no clear statement demonstrating how various public facilities plan infrastructure costs will be funded [pp. 7, 23]
- The public facilities plans and related documents provide conflicting information [p. 7]
- The sewer facilities plan contemplates provision of services to areas not part of the UGB proposal. [p. 15] At the same time, certain land included in the UGB proposal is not included in the sewer facilities plans. [p. 18]
- The sewer facilities plan does not satisfy Goal 11 requirements for a timely, orderly and efficient arrangement. [p. 20]
- The city’s sewer facilities plan was not coordinated with other entities, including state and federal agencies. [p. 20-21]
- The sewer facilities plan and Bend Area General Plan Chapter 8 (Facilities Plan) conflict with each other and with the city’s findings. [p. 21-22]
- Key Goal 11 determinants were not properly applied when developing the sewer facilities plan. [p. 22]
- The Northern Interceptor cost estimates omit crucial cost components. [p. 22-23]
- Goal 11 requires that estimates use current year costs but the city used 3-year old cost estimates. [p. 23]

Hunnel United Neighbors – The objection argues that the city failed to provide a sewer facility plan that is internally coordinated or provides for an orderly, timely and efficient arrangement of services. The objection challenges whether the Northern Interceptor produces an orderly arrangement of sewer service, given that Goal 11 directs that priority should be given to the large supply of unsewered land to the southeast and south which is located in the current UGB. The objection questions whether the Northern Interceptor will accommodate timely development in an area that is already subject to “serious transportation issues” and cost of service issues. The objection also questions whether the Northern Interceptor’s full cost, which has not been “determined or disclosed” related to the crossing of the Deschutes River, will demonstrate an efficient arrangement of its sewer service plans. [pp. 3-4]

Newland Communities – Most of the objection’s concerns raise jurisdictional issues related to review of the public facilities plans; these are addressed in section III.D of this report. The objection provides a single objection directly pertinent to Goal 11, which is stated in precautionary terms as follows: “If DLCD exercises jurisdiction over the PFPs,

DLCD’s review must conform with OAR 660-011-0010(1) and OAR 660-011-0050.” The objection then argues that the city’s decision meets these requirements. [July 2, 2009, letter from Christe C. White]

Anderson Ranch – The objection argues that in preparing its public facility plans, the city failed to comply with the citizen involvement requirements of OAR 660-015-0000(1). This objection is addressed in section III.K of this report under Goal 1 compliance.

J. L. Ward Company – The objection questions whether the sewer facility plan adequately addresses which existing and amended UGB areas are to be served by the proposed Southeast Sewer Interceptor and asks that this be clarified by the city. [June 22, 2009, letter from Jan Ward]

d. Analysis

In this section, the department examines whether the public facilities plans satisfy the requirements of Goal 11 and its rule, and whether those plans are consistent with the land use provisions of Goal 14, ORS 197.298 and OAR 660, division 24 relating to a UGB expansion. The following examination is based on the objections above and on the department’s own concerns.

Public notice, hearing issues and public involvement. Under OAR 660-025-0175(3) and ORS 197.610, the city is required to provide the department with notice of a proposed amendment 45 days prior to the city’s first evidentiary hearing on the proposal. The notice is required to contain the text of the amendment and any supplemental information that the local government believes is necessary to inform the director as to the effect of the proposal. [ORS 197.610(1)] The department received notice of the city’s June 2007 public hearings on its first UGB proposal, including draft public facility plans for a 4,884-acre UGB amendment considered at that time.^{31 32} The city’s October 8, 2008 revised notice,³³ however, which proposed to nearly double the size of its UGB proposal to 8,943 acres, did not include updated public facility plans, as pointed out in department letters sent to the city in October 2008 and November 2008.

³¹ While the city’s June 11, 2007, 45-day notice and submittal included a draft public facilities plan, it did not include other information necessary to review that proposal at that time. Specifically, the submittal did not contain any comparative analysis as required by ORS 197.298 and Goal 14 locational factors.

³² On March 30, 2007, the city submitted a plan amendment to the department that proposed to amend Chapter 8 – Public Facilities and Services element to the Bend Area General Plan. (DLCD file Bend 002-07, local file 07-012) The proposal included changing the plan text to incorporate by reference two new facility master plans, a Water Master Plan and a Sewage Collection System Plan, with no changes to existing policies or the UGB. The intent of these amendments was to support re-calculation of system development charges for water and sewer services and for capital improvement programming. In April, 2007 the city indefinitely postponed hearings on the amendment. (Source: DLCD plan amendment files)

³³ The city’s October 8, 2008 revised 45-day notice was revised on October 20, 2008; neither of the notices contained an updated public facility plan for the 8,943-acre UGB proposal.

Several parties raise objections regarding adequate public involvement and the city's public hearings process related to adoption of its public facility plans; these objections are addressed in sections III.K in this report. Objections have also raised jurisdictional questions relating the city's public facility plan adoption; these objections are addressed in section III.D.

Public facility plans were improperly used to determine the location of the UGB. A key question raised by objector is whether the sewer collection and water distribution master plans are consistent with the city's UGB expansion, and whether these plans provided the analysis required to evaluate alternate locations for a UGB expansion, as required by ORS 197.298, Goal 14 and OAR 660, division 24.

The first step in making such a determination is to examine the capacity of the city's public facilities to serve the existing UGB area, as well as areas proposed for addition to the UGB. OAR 660-024-0060(8).

The next step is a comparative analysis of the relative costs, advantages, and disadvantages of alternative UGB expansion areas with respect to the provision of public facilities and services. OAR 660-024-0060(8).

The data and findings from the second step may be used in two situations:

1. When a city prepares findings supported by an adequate factual base to demonstrate that future urban services could not reasonably be provided to higher priority lands (such as exception lands) due to topographical or other physical constraints, the city may then exclude these lands from the prioritization otherwise required by ORS 197.298(1). ORS 197.298(3)(b).
2. In addition, if the total amount of land in a particular priority category exceeds the amount needed, the city may apply, weigh and balance the four Goal 14 location factors to select which lands will be added to the UGB. One of those four factors is the "orderly and economic provision of public facilities and services" (see OAR 660-024-0060(1)).

The requirements for analyzing alternate UGB expansion areas are contained in OAR 660-024-0060(8).

The city's Goal 11 findings state, "The city has based the proposed expansion of the UGB in part on the development of three (3) new sewer interceptors that are located beyond the city's current UGB." [Record at 205] The record does not support this finding. The sewer collection master plan included an analysis of planned new sewer interceptors, but the location of those interceptors was (for the most part) not identified as being on agricultural lands (the interceptors are located almost entirely on UAR lands, or within the existing UGB). Further the analysis of what lands will be served in the future in the master plans does not correlate with the lands in the UGB expansion area. The UGB expansion area includes substantial lands that are evaluated in the master plans,

creating an internal conflict in the city's General Plan contrary to Goal 2 as well as Goals 11 and 14. Nor do the master plans contain an analysis of the relative costs, advantages and disadvantages of alternative UGB expansion areas as required by OAR 660-024-0060(8). Instead, they simply analyze the feasibility of serving the existing UGB and UAR lands.

Not all serviceable exception areas were included in the public facility plans. Several objections point to certain lands included in the amended UGB but not included in the public facility plans, and certain other lands included in the public facility plans but not included in the UGB proposal. The Collection System Master Plan (CSMP) study area includes the area within the prior UGB, UAR exception lands adjacent to the existing UGB, all of the 1,500-acre Juniper Ridge area in the north one square mile of EFU lands,³⁴ and the Tetherow destination resort located southwest of the current UGB. [R. at 410] The CSMP has also included some exception lands adjacent to the UGB designated as SR 2½, and property owned by the Department of State Lands (DSL). The UGB expansion area does not include the DSL and Tetherow properties, and only a portion of the Juniper Ridge site (as location of a future university site); nor does it include a large area of rural residential development south of the city.

The city also adopted CSMP Addendum No. 1–Final Executive Summary and Alternative Technical Analysis: North East Bend (2007) which expands the territorial scope of the CSMP approximately 1.5 miles eastward north of Butler Market Road to include both exception and resource lands in the northeast area of the UGB proposal. [R. at 517-550] The main purpose of this study is to propose a more southerly alignment for the Plant Interceptor sewer line to the treatment plant. It is not clear from the record what disposition occurs between the CSMP’s original version of the Plant Interceptor expansion and alignment and the North East Bend supplement, which appears as an alternative to the original CSMP Plant Interceptor proposal. Chapter 8 of the General Plan appears to provide that the CSMP (rather than the Addendum) controls. [R. at 1495 (“[The CSMP] shall direct the development of the system and be the basis for all sewer planning and capital improvement projects.” R. at 1495, Policy 2.)³⁵

³⁴ Land referred to as Section 11 owned by the Oregon Department of State Lands, zoned for exclusive farm use and located adjacent to the current UGB on the east side.

³⁵ The city also adopted CSMP Addendum No. 3–Technical Memorandum 1.5–Hamby Road Sewer Analysis (2008) which proposes an alternative sewer interceptor approximately one mile east of the existing UGB on a mix of exception and resource land. The newly proposed route at least partially replaces an earlier proposed Southeast Interceptor alignment along 27th Street. [R. at 693-703] This proposed alternative interceptor, proposed as an alternative alignment for the Southeast Interceptor, would flow north from Stevens Road (Department of State Lands property located at Section 11) along Hamby Road to one of the Plant Interceptor alternatives described above. Similar to the Plant Interceptor alternatives, the findings do not explain the disposition between the CSMP’s original alignment for the Southeast Interceptor expansion and the Hamby Road alternative. The Addendum No. 3 shows the costs of the two alignments to be very similar, and indicates that there are disadvantages to the Hamby Road alignment. [R. at 698]

Approximately 640 acres of exception land adjacent to the prior (and current) UGB in the southwest area in the vicinity of Bucks Canyon Road and west of Highway 97 are not evaluated in the CSMP. This area meets the city's suitability criteria, but is not included in the UGB or in the CSMP. [R. at 2449] The Bucks Canyon Road exception area is zoned RR-10 and consists of mostly large-lot exception properties. This exception area was included in the September 2008 UGB alternatives analysis in Alternatives 1 and 2, and a significant portion of Alternative 3. [R. at 5983, 5986 and 5989, respectively] Each alternative map showed proposed sewer interceptors and major roadway facilities. These exception lands are not considered in the CSMP although they meet the suitability criteria for residential development and are located at a higher elevation than gravity sewers in CSMP Planning Study Area No. 8 served by the CSMP's proposed Southeast Sewer Interceptor. [R. at 463, 476]

The Water System Master Plan Update does not cover all the existing UGB or expanded UGB area. The Water System Master Plan (WSMP) update was completed in March 2007. [R. at 226] According to the WSMP, the city serves 53,000 people within its existing UGB at the time the study was completed. The remaining population within the UGB was served by two private water providers, the Avion Water Company and Roats Water System. [R. at 236] The WSMP goes on to point out that the plan includes the "current service area within the UGB and the Tetherow development area as well as the Juniper Ridge area." [R. at 236]

The WSMP does not contain any public facility plan components for the Avion Water Company or Roats Water System, as required by OAR 660-011-0005 and -0010 and OAR 660-024-0020(1). The WSMP does not appear to contain composite service maps of the UGB service areas or illustrations of the proposed principle water distribution system operated by the Avion Water Company or Roats Water System.

The UGB expansion proposal includes areas served by the city, Avion Water Company, and Roats Water Company. However, there is no evidence that the WSMP includes plans for these expansion areas, as required by the Goal 11 and 14 rules. The WSMP also does not appear to satisfy the coordination requirements in Goals 2 and 11.

Sewer plans undercut providing adequate and timely services to unserved, underserved and areas with high infill and redevelopment potential, such as the Central area. This objection is closely related to the Goal 14 requirement to promote efficient patterns of urban development; adequate provision of density measures called for by ORS 197.296 and Goal 14; and OAR 660-024-0050(4), which calls for demonstration that land needs cannot reasonably be accommodated on land already inside the UGB prior to expanding the boundary.

The most significant CSMP project to affect the service capacity of the Central area is the need for a threefold increase in capacity of the Westside pump station, which is a major regional facility serving west and central Bend. The CSMP shows that ultimate buildout of the service area relying on the Westside pump station will require rerouting some of the increased flow from the pump station to a new Westside Interceptor, hence

connection to a new Northern Interceptor near Highway 97, all to relieve the current central interceptor, which follows a northeasterly alignment to the treatment plan. [R. at 493, 494, 495, 497] The CSMP's cost estimate for upgrading the Westside pump station, Westside Interceptor and Northern Interceptor to near Highway 97 is almost the same as building the entire Northern Interceptor, including an alignment that crosses the Deschutes River and follows the contour around the north and west quadrants of Awbrey Butte. [R. at 488, 499, 504]

The CSMP notes that 53 percent of the acreage, or 9,468 acres, within the existing UGB does not currently receive sanitary sewer service based on the city's 2005 database. [R. at 407] The city identifies 2,909 acres of vacant and redevelopable residential land by plan designation in UGB in 2008. [R. at 1071, 1083] The CSMP describes its UGB buildout conditions as the number of dwelling units "calculated assuming all parcels developed on a net acreage basis at the average zoning density for the specific land use type for each parcel." [R. at 407] For areas within the current UGB, the CSMP utilizes average densities for new housing construction over the last six years, as inventoried by the city planning department.³⁶ [R. at 417] The city's RS designation is estimated to build out at 5.3 dwelling units per acre during the planning period.

For UAR areas located outside the existing UGB, the CSMP assumes an average residential density of 5.3 dwelling units per acre. [R. at 417] However, nothing in the record demonstrates how almost 3,000 acres of land "unsuitable" for urban development, and 519 acres of buildable "surplus," are analyzed and accounted in the sewer facility plan. The effect of these approximately 3,500 acres of "unsuitable" and "surplus" land on the capability and capacity of service cannot be determined from the record when it provides little or no information on the location of such "unsuitable" and "surplus" lands.

On the other hand, the city's housing needs analysis assumes that vacant and redevelopable residential land within the current UGB, will build out at the current average density of 3.96 units per acre. [R. at 1071, 1289] For the expanded UGB area, however, the housing needs analysis assumes an average density of just under 5.9 units per acre on 941 net acres of residential development spread over 2,866 acres. [R. at 1080, 1082] In essence, the city proposes to provide higher densities in UGB expansion areas on the city periphery than on existing vacant and redevelopable land inside the existing UGB.

Both needs analysis numbers are inconsistent with those used by the CSMP. For areas in the existing UGB, the city's needs analysis density is significantly less than that of the CSMP, which from a sewer service perspective, effectively leaves more development capacity inside the UGB than reported by the city.

³⁶ This residential density data is provided in Table 2-7 of the CSMP. [Record at Page 418] An average overall density and period of measurement is not provided, though. The department believes this data shows recent density of new construction for the period of 1998 to 2005.

The Bend General Plan incorporates a defective PFP. The discussion above highlights internal inconsistencies between the city’s water and sewer facilities plans and the UGB expansion. Chief among these inconsistencies are that the sewer plans include areas that are not part of the UGB expansion area, and the UGB expansion area includes areas not analyzed in the CSMP. Similar deficiencies appear for the water system plan. These internal inconsistencies are incorporated into the Bend General Plan in chapter 8, Public Facilities and Services, do not provide an adequate public facilities plan required by Goal 2 and Goal 11 or as required by the Goal 11 rules or the UGB amendment rules (OAR 660, divisions 11 and 24, respectively). [R. at 1480, 1483]

No timely, orderly and efficient arrangement of public facilities. Timely, orderly and efficient arrangement refers to “a system or plan that coordinates the type, locations and delivery of public facilities and services in a manner that best supports the existing and proposed land uses.” [Goal 11 and OAR 660-011-0000] If the public facility plan is found to be incomplete, as described immediately above, then the water and sewer facility plans, as a whole, cannot demonstrate the “timely, orderly and efficient arrangement of public facilities.”

Did not evaluate carrying capacity. “Carrying capacity” is a term used by Statewide Planning Goal 6. This term does not apply directly to Goal 11 unless a water or air quality violation is found. Since the UGB expansion does not directly implicate water or air quality standards, there is no Goal 11 compliance issue.

Can the city’s public facilities plan be acknowledged for areas of the existing UGB, only? At the city's request, the department considered whether the updated public facilities plan could be partially acknowledged for use in planning sewer and water services within the existing UGB. In order to be acknowledged, the adopted plan would need to demonstrate compliance with Goal 11 and its rules, including those parts of the goal and rules that prohibit extension of sewer collection systems beyond the UGB to serve properties located outside of the current UGB. The exception includes mitigating circumstance for specifically recognized health hazards.

Internal inconsistencies identified in this section, including density assumptions related to infill and redevelopment, and the efficient development of vacant land, need to be resolved between the city’s needs analysis and its public facilities plans before the public facilities plans may be acknowledged. In addition, the city must complete its public facility plan for water by including information called out in OAR 660-011-0010 for areas served by the Avion Water Company and Roats Water Company, consistent with the city’s urban growth management agreement with each water company. [OAR 660-011-0015] As a result, the director determines that he cannot partially acknowledge the city's public facilities plan based on the current submittal.

d. Conclusions

The director remands the public facilities plans for sewer and water, and directs the City of Bend to complete the work described below.

The city is directed to prepare revised public facility plans and amend chapter 8 of the Bend Area General Plan to clearly identify what sewer and water projects are needed to accommodate development in the UGB expansion area, including the elements listed below. To the extent that the city is relying on relative costs of public facilities and services to justify inclusion of particular lands within the UGB expansion area, it must include the comparative analysis required by OAR 660-024-0060(8).

Revised public facilities plans shall contain the items listed in ORS 660-011-0010(1), which outlines the minimum content for a public facility plan, including:

- a. An inventory and general assessment of the condition of all the significant public facility systems which support the land uses designated in the acknowledged comprehensive plan;
- b. A list of the significant public facility projects which are to support the land uses designated in the acknowledged comprehensive plan. Public facility project descriptions or specifications of these projects as necessary;
- c. Rough cost estimates of each public facility project;
- d. A map or written description of each public facility project's general location or service area;
- e. Policy statement(s) or urban growth management agreement identifying the provider of each public facility system. If there is more than one provider with the authority to provide the system within the area covered by the public facility plan, then the provider of each project shall be designated;
- f. An estimate of when each facility project will be needed; and
- g. A discussion of the provider's existing funding mechanisms and the ability of these and possible new mechanisms to fund the development of each public facility project or system.